

REMARKS

Status of Claims and Amendment

Claims 1-6 are all the claims pending in this application. Claims 1-5 are withdrawn from consideration. Claim 6 is rejected. Claim 6 is amended herewith. Support for the amendment to claim 6 can be found throughout the specification as filed, for instance, at Examples 5 and 6 of the specification. Claim 6 is further amended to improve the wording of the claimed invention.

No new matter is added.

Response to Rejections Under 35 U.S.C. § 112, Written Description

Claim 6 remains rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement for the same reasons of record.

In response, Applicants have shown possession of the claimed invention by describing the claimed invention with all of its limitations. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). As previously argued, the claimed components of claim 6 are explicitly disclosed in the specification at for instance, Examples 5-8, Figs. 6 and 7, and page 7, lines 13-16. Further, it would have been apparent to one of ordinary skill in the art from reading the disclosure in the specification, that the presently claimed active ingredients are essential and material to the anti-cellulite composition for removing cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH). Furthermore, the Office Action has failed to establish a reasonable basis why one of ordinary skill in the art would not recognize the disclosure in the specification is a description of the invention as defined by the claims. M.P.E.P. § 2163.04.

Nevertheless, and solely to advance prosecution of the present application, claim 6 has been amended to clarify that the claimed anti-cellulite composition consisting of L-theanine,

caffeine, genisteine, L-carnitine and catechin, as active ingredients. The composition also contain inactive ingredients for formulating the composition into external skin application formulation. Such amendments may be supported by, at least, the disclosure at page 7, line 17 - page 18, line 4, Example 1 (Formulation example) and Experimental examples 5 and 6.

Reconsideration and withdrawal of the rejection under § 112, first paragraph, is respectfully requested.

Response to Rejections Under 35 U.S.C. § 103

Claim 6 remains rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiegel (U.S. Publication No. 2004/0082657) and in view of Ingram (U.S. Publication No. 2002/0010141), for the reasons of record. For brevity, these reasons are not reiterated herein.

In addition, the Office Action asserts that Applicants' arguments that "consisting essentially of" to claim 6 is not new matter is not persuasive because the specification does not define "consisting essentially of". Also, the Office Action asserts that the anti-cellulite composition recited in the preamble is an intended use that does not have patentable weight, and both Spiegel and Ingram are directed to controlling weight gain by suppressing appetite and, in the instant application, the claim recited catechin as an optional component. The Office Action appears to assert that it would have been obvious to use an agent to induce weight loss in order to naturally remove cellulite because fat is the cause of cellulite. The Office Action also asserts that both Spiegel and Ingram teach at least 5 mg of any or all of the mentioned ingredients present is effective which meets the range of the claimed invention of 0.0001% to 20%.

In response, Applicants note that the Office Action has failed to establish a *prima facie* case of obviousness for at least the following reasons.

First, as previously argued, neither Spiegel nor Ingram, separately or in combination, teach or suggest all of the claim limitations. Spiegel does not teach or suggest genisteine or catechin. Ingram does not teach theanine and L-carnitine, and does not cure the deficiencies of Spiegel because although Ingram discloses genistein, Ingram does not teach or suggest catechin, as presently claimed.

Second, although Spiegel is directed to suppressing appetite (see Abstract of Spiegel) and Ingram is directed to controlling weight gain and/or inducing weight loss by suppressing appetite or food consumption (see Abstract), neither Spiegel nor Ingram teach or suggest removal of cellulite much more reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH) to remove cellulite, as claimed. There is no teaching or suggestion in either Spiegel or Ingram that appetite suppression or controlling weight gain and/or loss involves reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH). Spiegel explicitly teaches the use of stimulants and thermogenic compounds to suppress appetite (see paragraph [0003] of Spiegel), and at most, teaches an appetite-suppressing amount of only L-theanine (see paragraph [0006] of Spiegel). Spiegel does not teach or suggest any other active ingredient than L-theanine because Spiegel explicitly teaches an “appetite suppressant compound consists essentially of L-theanine and optionally one or more *inert* ingredients [emphasis added]” (see paragraph [0006] of Spiegel). In fact, as previously argued, Spiegel explicitly teaches away from using caffeine (see last sentence of paragraph [0014] of Spiegel).

Similarly, Ingram teaches that “obesity condition is strongly associated with genetically inherited factors that contribute to increased appetite, preference for highly caloric foods, reduced physical activity, and increased lipogenic metabolism” (see paragraph [0004] of Ingram) so that Ingram explicitly teaches away from using caffeine because the method of Ingram

“avoids the disadvantages associated with stimulant weight-loss drugs, such as *caffeine* and amphetamine [emphasis added].” (See Abstract of Ingram). At most, Ingram teaches suppressing weight gain, inducing weight loss, or imparting a feeling of gastric fullness by administering an isoflavone “selected from the group consisting of daidzein, genistein, formononetin, and biochanin A” (see paragraph [0010] of Ingram).

Third, the dosage ranges disclosed in Spiegel (see paragraph [0017] and Abstract of Spiegel) and Ingram (see paragraphs [0025] and [0029] of Ingram) are for *oral* administration to suppress appetite (see Abstract of Spiegel), suppress weight gain or induce weight loss (see paragraph [0010] of Ingram), whereas the claimed composition is for *external* use to remove cellulite. Thus, there would have been no motivation or reason for one of ordinary skill in the art to “optimize” the *oral* dosages disclosed in Spiegel and Ingram to the presently claimed amount which is used for *external* application.

Thus, there would have been no motivation or reason for one of ordinary skill in the art to combine the teachings of Spiegel and Ingram. However, even if one of ordinary skill in the art was somehow motivated to make such a combination, the combination of Spiegel and Ingram does not result in the presently claimed anti-cellulite composition for at least the above reasons. That is, the combination of Spiegel and Ingram does not teach or suggest each and every claim limitation, nor motivate one of ordinary skill in the art to make the presently claimed anti-cellulite composition consisting of L-theanine, caffeine, genistein, L-carnitine, and catechin as active ingredients to remove cellulite by reducing the activity of glycerol-3-phosphate dehydrogenase (GPDH). At most, Spiegel teaches L-theanine and Ingram teaches genistein. Neither Spiegel nor Ingram teach or suggest L-carnitine or catechin, and both Spiegel and Ingram teach away from using caffeine.

Reconsideration and withdrawal of the rejection under § 103(a) is respectfully requested.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Sunhee Lee/

Sunhee Lee
Registration No. 53,892

/Tu A. Phan/

Tu A. Phan, Ph.D.
Registration No. 59,392

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: August 12, 2009